

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ANDREW REINER,
Defendant.

16-MJ-05117-MJR

**NOTICE OF MOTION TO
RECONSIDER DETENTION ORDER
AND GRANT DEFENDANT PRE-
TRIAL RELEASE**

MOTION BY:

Fonda Dawn Kubiak, Assistant Federal Public Defender, Attorney for Andrew Reiner.

DATE, TIME & PLACE:

Before the Honorable Michael J. Roemer, United States Magistrate Judge, Robert H. Jackson United States Courthouse, 2 Niagara Square, Buffalo, New York 14202, **on the papers**.

SUPPORTING PAPERS:

Affirmation of Fonda Dawn Kubiak, dated January 6, 2017.

RELIEF REQUESTED:

Release on conditions pending sentence.

DATED:

January 6, 2017, Buffalo, New York.

/s/Fonda Dawn Kubiak

Fonda Dawn Kubiak
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TO: Scott Allen
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

16-MJ-5117-MJR

v.

ANDREW REINER,

Defendant.

**AFFIRMATION IN SUPPORT OF
MOTION TO RECONSIDER
DETENTION ORDER AND GRANT
DEFENDANT PRE-TRIAL RELAESE**

FONDA DAWN KUBIAK, ESQ., affirms under penalty of perjury that:

1. I am an attorney with the Federal Public Defender's Office located at 300 Pearl Street, Suite 200, Buffalo, New York 14202, and I represent the defendant, Andrew Reiner, in the instant matter.

2. Mr. Reiner respectfully moves this Court pursuant to Title 18 U.S.C. §3142(f) to reconsider the Order of Detention (Docket No. 5) entered against Mr. Reiner and grant Mr. Reiner pre-trial release.

3. On September 22, 2016, Mr. Reiner was charged by criminal complaint with using a cellphone and the internet to persuade a minor to engage in sexual activity, in violation of 18 U.S.C. §2422(b). At the initial appearance, on September 23, 2016, the Government moved for pretrial detention, pursuant to 18 U.S.C. §3142(f). A detention hearing was held on September 27, 2016, at which the parties proceeded by proffer. For the reasons stated on the record at the conclusion of the detention hearing, the Court found by clear and convincing

evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

4. Upon information and belief, Andrew Reiner's father, Lyle Reiner, receives treatment at Veteran's Hospital in Buffalo, New York for a plethora of medical conditions. In particular, Lyle Reiner has chronic myeloid leukemia and his health has deteriorated since Mr. Reiner's incarceration. Lyle Reiner is the primary caretaker of Andrew Reiner's disabled mother and brother in addition to providing care and assistance to Andrew Reiner's girlfriend and young son. As result, Mr. Reiner's family is suffering exceptional undue hardships. Accordingly, Mr. Reiner is requesting pre-trial release on home incarceration in combination with other conditions in order to provide care giving to his father, mother, disabled brother and his young child.

5. Mr. Reiner maintains that the presumption under 18 U.S.C. § 3142(e)(3) is rebutted in this case, and that there are a number of conditions or combinations of conditions that would reasonably assure Mr. Reiner's appearance and protect the safety of the community if he were granted pre-trial release.

6. Andrew Reiner is requesting pre-trial release based upon the deterioration of his father's medical condition and his need to provide caretaking to his family. Mr. Reiner is a candidate for pre-trial release on home incarceration based on his strong family support, residence in his parent's home, his connection to the community, his work history, and the fact that he has never failed to appear in court. In terms of risk of flight, there are absolutely no facts that would substantiate that he is a risk of flight and that Mr. Reiner would fail to appear should the Court impose conditions that are available to it. There are monetary sureties that can be in

place, signature bonds, and other additional combination of conditions that could specifically address this Court's concern with respect to appearance.

7. As to dangerousness, there are also numerous combinations of conditions that can be put in place that will reasonably assure the safety of any minor victim as well as society itself. The seriousness of the charges do not necessarily mandate detention. It's a factor to be considered, but it should not be the controlling fact. The Court has available to it electronic monitoring and home incarceration. Andrew Reiner is in a position to reside with his parents in Cheektowaga, New York, on electronic monitoring. Electronic monitoring guarantees this Court that all of his movements will be monitored and addressed by probation. The Court can also impose counseling conditions and mandate compliance with that counseling. In addition, the Court can impose conditions that he not use or possess a computer or any other electronic devices. The Court could impose computer monitoring if it were to allow him access to a computer. There are a multitude of conditions that can be put in place to address that concern. Finally, the Court can direct the defendant not to have any contact with the victim in this case. The Court can put in place other orders of protection with respect to that.

8. Accordingly, Mr. Reiner submits that there are a combination of conditions that could be put in place to reasonably assure the protection of the alleged victim and the community at this time.

WHEREFORE, the defendant, Andrew Reiner, respectfully moves this Court to reconsider its order of detention and requests his pre-trial release on conditions.

DATED: January 6, 2017
Buffalo, New York

Respectfully submitted,

/s/Fonda Dawn Kubiak
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